

Anthony T. Case, Esq. (SBN 149583)
Michele M. Angeles, Esq. (SBN 228004)
FARMER CASE & FEDOR
402 W. Broadway, Suite 1100
San Diego, California 92101
(619) 338-0300 / (619) 338-0180 (Fax)

Attorneys for Defendant
REPOSSESSION SPECIALIST, INC. dba ABA RECOVERY SERVICE, INC.
(erroneously sued and served as ABA RECOVERY SERVICE, INC.)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSEPHINE THORNTON,

Plaintiff,

v.

ABA RECOVERY SERVIC, INC.,
PAR, INC. dba PAR NORTH
AMERICAN, and DOES 1 through 10,
inclusive

Defendants.

CASE NO.: 15CV1971 CAB KSC

**ANSWER ON BEHALF OF
DEFENDANT REPOSSESSION
SPECIALIST, INC. dba ABA
RECOVERY SERVICE, INC.
(ERRONEOUSLY SUED AND
SERVED AS ABA RECOVERY
SERVICE, INC.)**

District Judge: Hon. Cathy Ann
Bencivengo / Courtroom 4C
Magistrate Judge: Hon. Karen S. Crawford
Action Filed: September 3, 2015
Trial Date: Not Yet Assigned

Comes now Defendant REPOSSESSION SPECIALIST, INC. dba ABA RECOVERY SERVICE, INC. (erroneously sued and served as ABA RECOVERY SERVICE, INC.), by and through counsel, and in Answer to Plaintiff's Complaint on file herein, state as follows:

1. In answer to paragraph 1, Defendant admits that it was hired by Par North to repossess Plaintiff's vehicle. Defendant lacks sufficient knowledge or information to form a belief as to the truth of rest of the allegations in paragraph 1 and on that basis denies the allegations.

2. In answer to paragraph 2, Defendant denies each and every allegation contained in paragraph 2.

1 3. In answer to paragraph 3, Defendant denies each and every allegation
2 contained in paragraph 3.

3 4. In answer to paragraph 4, on information and belief, Defendant admits
4 the jurisdiction allegations in paragraph 4.

5 5. In answer to paragraph 5, on information and belief, Defendant admits
6 the venue allegations in paragraph 5.

7 6. In answer to paragraph 6, Defendant lacks sufficient knowledge or
8 information to form a belief as to the allegations in paragraph 6 and on that basis
9 denies the allegations

10 7. In answer to paragraph 7, Defendant admits that ABA Recovery
11 Services, Inc. is a California corporation with offices in San Diego, California.

12 8. In answer to paragraph 8, Defendant lacks sufficient knowledge or
13 information to form a belief as to the trust of the allegations contained in paragraph
14 8 and denies such allegations.

15 9. In answer to paragraph 9, Defendant lacks sufficient knowledge or
16 information to form a belief as to the trust of the allegations contained in paragraph
17 9 and denies such allegations.

18 10. In answer to paragraph 10, Defendant lacks sufficient knowledge or
19 information to form a belief as to the trust of the allegations contained in paragraph
20 10 and denies such allegations.

21 11. In answer to paragraph 11, Defendant realleges all responses to
22 paragraphs 1-10 as though fully set herein.

23 12. In answer to paragraph 12, Defendant denies each and every allegation
24 contained in paragraph 12.

25 13. In answer to paragraph 13, Defendant denies each and every allegation
26 contained in paragraph 13.

27 14. In answer to paragraph 14, Defendant denies each and every allegation
28 contained in paragraph 14.

1 15. In answer to paragraph 15, Defendant denies each and every allegation
2 contained in paragraph 15.

3 16. In answer to paragraph 16, Defendant denies each and every allegation
4 contained in paragraph 16.

5 17. In answer to paragraph 17, Defendant denies each and every allegation
6 contained in paragraph 17.

7 18. In answer to paragraph 18, Defendant realleges all responses to
8 paragraphs 1-17 as though fully set herein.

9 19. In answer to paragraph 19, Defendant admits that the cited statutes
10 exist, however, Defendant denies any violations of such statutes.

11 20. In answer to paragraph 20, Defendant denies each and every allegation
12 contained in paragraph 20.

13 21. In answer to paragraph 21, Defendant denies each and every allegation
14 contained in paragraph 21.

15 22. In answer to paragraph 22, Defendant denies each and every allegation
16 contained in paragraph 22.

17 23. In answer to paragraph 23, Defendant denies each and every allegation
18 contained in paragraph 23.

19 24. In answer to paragraph 24, Defendant denies each and every allegation
20 contained in paragraph 24.

21 25. In answer to paragraph 25, Defendant denies each and every allegation
22 contained in paragraph 25.

23 26. In answer to paragraph 26, Defendant denies each and every allegation
24 contained in paragraph 26.

25 27. In answer to paragraph 27, Defendant denies each and every allegation
26 contained in paragraph 27.

27 28. In answer to paragraph 28, Defendant denies each and every allegation
28 contained in paragraph 28.

1 29. In answer to paragraph 29, Defendant realleges all responses to
2 paragraphs 1-28 as though fully set herein.

3 30. In answer to paragraph 30, Defendant denies each and every allegation
4 contained in paragraph 30.

5 31. In answer to paragraph 31, Defendant denies each and every allegation
6 contained in paragraph 31.

7 32. In answer to paragraph 32, Defendant denies each and every allegation
8 contained in paragraph 32.

9 33. In answer to paragraph 33, Defendant denies each and every allegation
10 contained in paragraph 33.

11 **FIRST AFFIRMATIVE DEFENSE**

12 34. Defendant is informed and believes and on that basis alleges that
13 Plaintiff's Complaint fails to state a claim against Defendant for which relief may be
14 granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 35. Defendant is informed and believes and upon such information and
17 belief alleges that at all times mentioned herein, if any Defendant was negligent, the
18 conduct of all other parties, both known and unknown, should be compared to
19 determine the degree of fault, if any, between the parties.

20 **THIRD AFFIRMATIVE DEFENSE**

21 36. Defendant is informed and believes and upon such information and
22 belief alleges that at all times mentioned herein, Plaintiff was negligent, careless and
23 reckless and unlawfully conducted herself so as to substantially contribute to
24 Plaintiff's alleged injuries and damages compared to the conduct of all other parties,
25 all of which said negligence either bars in whole or in part damages sought herein.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 37. Defendant is informed and believes and upon such information and
28 belief alleges that at the time and place of the incident alleged in Plaintiff's

1 Complaint, the Plaintiff knew of the danger and risk incident to the undertaking, but
2 despite such knowledge, Plaintiff freely and voluntarily assumed and exposed
3 herself to all risk of harm and the consequential injuries and damages, if any,
4 therefrom.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 38. Defendant is informed and believes and thereon alleges that in the
7 event Plaintiff should establish any liability on the part of this answering Defendant,
8 which liability is expressly denied, this answering Defendant may not be obligated
9 to pay sums representing a proportion or percentage of fault not his/her own, but
10 that of Plaintiff, other parties to this action and third persons not parties to this
11 action. Defendant is entitled to an adjudication and determination of the respective
12 proportions or percentages of fault, if any, on this answering Defendant's part and
13 on the part of the Plaintiff and other parties to this action and third persons not
14 parties to this action pursuant to the Doctrines of Comparative Negligence and the
15 Fair Responsibility Act of 1986, codified in Civil Code §1431-1431.5.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 39. Defendant is informed and believes and thereon alleges that at all times
18 mentioned herein, if any defendant was negligent, co-defendants, both known and
19 unknown, were negligent, careless and reckless and unlawfully conducted
20 themselves so as to substantially contribute to Plaintiff's injuries, damages and
21 losses, and said negligence, if any, either bars in whole or in part damages sought
22 herein against this answering defendant.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 40. Defendant is informed and believes and thereupon alleges that its
25 action or inaction was not the sole, legal or proximate cause of the incidents upon
26 which liability is based or damages awarded, if any, and that damages awarded, if
27 any, must be apportioned according to the respective fault of all parties, persons or
28 entities, or their agents, servants and employees, whether or not parties to this

1 litigation, who contributed to or caused the incidents or damages alleged in the
2 Complaint.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 41. This answering Defendant is informed and believes and thereon alleges
5 that the negligence, if any, of this answering Defendant was not a substantial factor
6 in bringing about the Plaintiff's alleged injuries and damages, and therefore was not
7 a contributing cause thereof, but was superseded by the negligence of others, whose
8 negligence was an independent, intervening, superseding and a proximate cause of
9 any injury or damage suffered by the Plaintiff.

10 **NINTH AFFIRMATIVE DEFENSE**

11 42. Defendant is informed and believes and upon such information and
12 belief alleges that Plaintiff has failed to mitigate the damages referred to in the
13 Complaint, barring relief, in whole or in part, as to this answering Defendant.

14 **TENTH AFFIRMATIVE DEFENSE**

15 43. This answering Defendant is informed and believes and thereon alleges
16 that Plaintiff's claims are barred by Plaintiff's own willful misconduct.

17 **ELEVENTH AFFIRMATIVE DEFENSE**

18 44. This answering Defendant is informed and believes and thereon alleges
19 that Plaintiff's claims are barred by the doctrine of estoppel.

20 **TWELFTH AFFIRMATIVE DEFENSE**

21 45. This answering Defendant is informed and believes and thereon alleges
22 that Plaintiff's claims are barred by the doctrine of waiver.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 46. This answering Defendant is informed and believes and thereon alleges
25 that the Complaint and the averments thereof are uncertain, vague and ambiguous.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 47. This answering Defendant is informed and believes and thereon alleges
28 that the Complaint and every cause of action contained therein, is barred by the

1 provisions of California Code of Civil Procedure Sections 337, 337.1, 337.15, 338,
2 339, 339.5, 340, 342, 343, as well as Civil Code Section 2079.4, and any and all
3 other applicable statutes of limitation.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 48. This answering Defendant is informed and believes and thereon alleges
6 that Plaintiff has voluntarily engaged in wrongful and bad faith conduct and
7 activities with respect to the matters and transactions referred to in the Complaint
8 herein, barring any and all relief against this answering Defendant under the
9 doctrine of unclean hands.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 49. This answering Defendant is informed and believes and thereon alleges
12 that Plaintiff's claims that Defendant engaged in unfair debt collection practices in
13 violation of the Fair Debt Collections Practices Act and California Civil Code
14 §§1788, et seq., are barred by other provisions of Federal and California State law.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 50. This answering Defendant is informed and believes and thereon alleges
17 that Plaintiff has failed to plead with particularity the circumstances constituting the
18 alleged fraud and/or misrepresentation.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 51. This answering Defendant is informed and believes and thereon alleges
21 that Plaintiff has engaged in conduct and activities, pursuant to which she has
22 waived any and all claims and/or causes of action she may have against this
23 answering Defendant.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 52. This answering Defendant is informed and believes and thereon alleges
26 that Plaintiff has engaged in conduct and activities by reason of which she is
27 estopped to assert any claim or cause of action against this answering Defendant.

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1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 53. This answering Defendant is informed and believes and thereon alleges
3 that Plaintiff has not suffered any injury or damage whatsoever, and further denies
4 that Defendant is liable to Plaintiff for any injury or damage whatsoever.

5 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

6 54. This answering Defendant is informed and believes and thereon alleges
7 that this Defendant has met all appropriate standards for professional conduct
8 according to all rules promulgated in the Business and Professions and Civil Code
9 Sections.

10 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11 55. This answering Defendant is informed and believes and thereon alleges
12 that the Plaintiff's claims are barred, because the alleged acts of Defendant, forming
13 the basis of the Complaint, were lawful, explicitly approved and/or exempt from
14 prosecution.

15 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

16 56. This answering Defendant is informed and believes and thereon alleges
17 that Plaintiff's claims are barred, in whole or in part, because Defendant, at all
18 times, acted in good faith and did not directly or indirectly perform any act
19 whatsoever that would constitute a violation of any right of Plaintiff's or any duty
20 owed to Plaintiff.

21 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22 57. This answering Defendant is informed and believes and thereon alleges
23 that the alleged representations are not actionable statements of fact under
24 applicable law.

25 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

26 58. This answering Defendant denies each and every claim of Plaintiff and
27 denies that Defendant engaged in any wrongdoing or error of any kind. However,
28 should any alleged error be identified, then Plaintiff's claims are barred because any

1 alleged error on Defendant's part was a bona fide error notwithstanding Defendant's
2 use of reasonable procedures adopted to avoid any such error.

3 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4 59. This answering Defendant is informed and believes and thereon alleges
5 that Plaintiff have failed to set forth facts sufficient to support an award for
6 attorneys' fees.

7 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

8 60. This answering Defendant is informed and believes and thereon alleges
9 that it is entitled to the reasonable value of its attorneys' fees, costs of suit and other
10 litigation expenses incurred in the defense of this action.

11 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12 61. This answering Defendant is informed and believes and thereon alleges
13 that the Complaint and the purported causes of action alleged therein fail to set forth
14 facts sufficient to allow for recovery of punitive or exemplary damages from
15 Defendant.

16 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

17 62. This answering Defendant is informed and believes and thereon alleges
18 that the Complaint, to the extent it seeks punitive or exemplary damages, violates
19 the rights of Defendant to procedural and substantive due process under the
20 Fourteenth Amendment to the United States Constitution and under the Constitution
21 of the State of California.

22 **THIRTIETH AFFIRMATIVE DEFENSE**

23 63. This answering defendant alleges that plaintiff lacks the standing to
24 bring suit against this answering defendant before this Court.

25 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

26 64. This answering defendant alleges that the negligent actions of others
27 constitute superseding, intervening causes of Plaintiff's alleged injuries and/or
28 damages.

1 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2 65. This answering defendant alleges that Plaintiff's Complaint and each
3 purported cause of action therein are barred by the doctrines of express and implied
4 consent by Plaintiff.

5 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

6 66. This answering Defendant is informed and believes and thereon alleges
7 that the Plaintiff's Complaint, and each cause of action therein, is stated in
8 conclusory terms, and therefore said Defendant cannot fully anticipate all
9 affirmative defenses which may be applicable to this action. Accordingly, this
10 answering Defendant reserves the right to add additional affirmative defenses.

11 WHEREFORE, this answering Defendant prays judgment against Plaintiff as
12 follows:

- 13 1. That Plaintiff take nothing by way of the Complaint;
14 2. That Judgment be entered in favor of Defendant and against Plaintiff on
15 all causes of action;
16 3. For attorneys' fees and costs of suit incurred herein; and
17 4. For such other and further relief as the Court may deem just and proper.

18
19 Dated: October 16, 2015

FARMER CASE & FEDOR
By:

20
21
22 /s/ Anthony T. Case
23 ANTHONY T. CASE, ESQ.
24 MICHELE M. ANGELES, ESQ.
25 Attorneys for Defendant
26 REPOSSESSION SPECIALIST, INC.
27
28

1 **Case Name:** Thornton v. ABA Recovery Service, Inc., et al.
2 **Southern District Court of California:** 15CV1971 CAB KSC

3 **DECLARATION OF SERVICE**

4 I hereby declare as follows:

5 I am, and was at the time of service of the papers referred to herein, over the
6 age of eighteen (18) years, not a party to the action, and employed in the County of
7 San Diego, State of California. My business address is 402 W. Broadway, Suite
8 1100, San Diego, California 92101.

9 I caused to be served the following document(s):

10 **ANSWER ON BEHALF OF DEFENDANT REPOSSESSION
11 SPECIALIST, INC. dba ABA RECOVERY SERVICE, INC.
12 (ERRONEOUSLY SUED AND SERVED AS ABA RECOVERY
13 SERVICE, INC.)**

14 of which THE ORIGINAL DOCUMENT OR A TRUE AND CORRECT COPY is
15 attached hereto, addressed to each such addressee respectively as follows:

16 Alexander B. Trueblood, Esq.
17 Trueblood Law Firm
18 10940 Wilshire Blvd., Ste. 1600
19 Los Angeles, CA 90024
20 (310) 443-4139 / Fax: (310) 943-2255
21 alec@hush.com
22 **COUNSEL FOR PLAINTIFF**
23 **JOSEPHINE THORNTON**

24 ☒ **BY CM/ECF:** I electronically filed the foregoing document(s) with the Clerk
25 of the Court using the CM/ECF system, which will send an email notification of
26 such filing to the person(s) so designated above.

27 ☐ **BY E-MAIL:** I caused said document(s) to be delivered via electronic mail (e-
28 mail) to the person(s) so designated above.

29 ☐ **BY U.S. MAIL:** I placed each sealed, prepaid envelope for collection and
30 mailing at 402 W. Broadway, San Diego, California, 92101. I am readily familiar
31 with the business practice for collection and processing of correspondence for
32 mailing with the United States Postal Service pursuant to which practice the
33 correspondence will be deposited with the United States Postal Service this same
34 day in the ordinary course of business.

35 ☐ **BY FACSIMILE:** I caused said document(s) to be transmitted by facsimile
36 transmission. The name(s) and facsimile machine telephone number(s) of the
37 person(s) served are set forth above. The sending facsimile machine properly
38 issued a transmission report confirming that the transmission was complete and
39 without error.

40 ☐ **BY OVERNIGHT MAIL:** I caused said document(s) to be deposited in a box or
41 other facility regularly maintained by an express service carrier providing overnight
42 delivery in an envelope or package designated by the express service carrier with
43 delivery fees paid or provided.

1 ☐ **BY PERSONAL SERVICE:** I caused such document(s) to be hand-delivered to
2 the person(s) served hereunder. A separate Proof of Personal Service will be
3 provided.

4 I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct. Executed October 16, 2015.

5 /s/ Christina Fedor
6 Christina Fedor
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